

**OPINION
61-162**

August 11, 1961 (OPINION)

OCCUPATIONS AND PROFESSIONS

RE: Optometry - Contact Lenses

This acknowledges the letter of August 10, 1961, addressed to this office on behalf of the North Dakota State Board of Optometry by John Hjellum, Jamestown, North Dakota, attorney for the Board.

In his letter Mr. Hjellum presents the following questions:

May one who makes contact lenses on a prescription from a registered optometrist or a physician or surgeon authorized to practice medicine in this State lawfully fit and insert contact lenses into the eyes of another person?

May a person not registered as an optometrist nor authorized to practice medicine in this State as a physician or surgeon lawfully fit and insert contact lenses into the eyes of another person with or without prescription?"

It is our understanding that contact lenses are lenses having focusing power, adapted and fitted in direct contact with the human eye to correct, relieve, and remedy abnormal refractive conditions of the individual, and that the fitting of contact lenses requires the same procedure as followed by the optometrist in the prescribing of conventional spectacles with the further operations involved of making measurements, fitting, etc., which are delicate in nature.

We note that section 43-13-01 of the North Dakota Century Code defines optometry and the practice of optometry as follows:

In this chapter, unless the contact or subject matter otherwise requires:

1. Optometry shall be defined as a profession whose practitioners are engaged in the refraction of the human eye and the examination thereof, together with its appendages, without the use of drugs, medicines or surgery; by using such objective or subjective techniques as are necessary to enable recognition of disease for medical referral; and to determine and interpret any visual, muscular, neurological or anatomical anomaly of the eye, which may be aided, relieved or corrected through visual training procedures or through the use of lenses, prisms, filters, or combination thereof held either in contact with the eye or in frames or mountings. Any person so engaged in visual training procedures or who employs or prescribes lenses, prisms, filters, combinations thereof held either in contact with the eye or in frames or mountings, to aid, relieve or correct any visual anomaly, or holds himself out as being able to do so, shall be deemed to be engaged in

the practice of optometry and must have a certificate of registration, as herein provided by this chapter.

. . . .

3. The term 'practicing optometry' shall mean:
 - a. Displaying a sign or in any way advertising as an optometrist;
 - b. Employing any means for the measurement of the powers of vision or the adaptation of lenses for the aid thereof
 - c. Engaging in any manner in the practice of optometry." (Emphasis supplied.)

We also note that section 43-13-02(3) exempts physicians and surgeons authorized to practice medicine in this state from the provisions of chapter 43-13.

Section 43-13-15 of the North Dakota Century Code provides in part that no person shall practice optometry in this state unless he first obtains a certificate of registration and complies with the requirements of chapter 43-13. Section 43-13-27 of the North Dakota Century Code makes it a misdemeanor to violate any of the provisions of chapter 43-13.

Section 43-13-01, quoted in part above, was last amended and reenacted by Chapter 284 of the 1955 Session Laws. It is obvious from the term "held either in contact with the eye" as used in that section that the Legislature was cognizant of the fact that contact lenses are now being used. We note that the Legislature specifically included with the definition of the term "practicing optometry" the phrase "employing any means for the measurement of the powers of vision or the adaptation of lenses for the aid thereof;". The definition of the word "adaptation" as found in Webster's New Collegiate Dictionary (Second Ed. 1960) is: "Act or process of adapting, or state of being adapted." "Adapt" is defined by the same source as: "To make suitable; to fit or suit; to adjust." (Emphasis supplied.) These terms are obviously given their accepted meaning in the statute. Thus the practice of optometry under our statute includes the fitting of lenses to the eye for the aid of the powers of vision. Any person who is not a licensed optometrist in this state or specifically exempted from the provisions of chapter 43 of the North Dakota Century Code regulating the practice of optometry is therefore not authorized to fit and insert contact lenses into the eyes of another person.

In this connection we are impressed by the decision of the Supreme Court of Louisiana in State v. Rones, 223 La. 839, 67 So.2d. 99 (1953) in which that court held that the fitting of glasses and lenses to the eye fell within the definition of the practice of optometry. The case contains a comprehensive discussion of this question and cites several cases in support of its conclusions.

Based upon the above discussion our answer to your first question is

that a person who makes contact lenses on a prescription from a registered optometrist or a physician or surgeon authorized to practice medicine in this state may lawfully fit and insert contact lenses into the eyes of another only when properly registered under the optometry or medical practice act, as the case may be. The answer to your second question is that a person not registered as an optometrist nor authorized to practice medicine in this state as a physician or surgeon may not lawfully fit and insert contact lenses into the eyes of another person with or without prescription.

LESLIE R. BURGUM

Attorney General